



California Fair Political Practices Commission

December 16, 1988

Michael F. Dean
Office of the City Attorney
311 Vernon Street
Roseville, CA 95678

Re: Your Request For Advice
Our File No. A-88-425

Dear Mr. Dean:

You have requested additional advice on behalf of several members of the City Council and Planning Commission of the City of Roseville about application of the Political Reform Act (the "Act")^{1/} to their duties on the city council and planning commission. The city councilmembers are Mel Hamel, Phil Ozenick and Bill Santucci. The planning commissioners are Jay Kinder and Pauline Roccucci.

The Commission has granted your request for an opinion about the limits of "legally required participation." Therefore, in this letter we are not responding to your question about "legally required participation."

QUESTIONS

Several members of the city council and planning commission own stock in Roseville Telephone Company.

1. May councilmembers and planning commissioners who own stock in Roseville Telephone Company participate in decisions to adopt specific plans that eventually will result in new consumers of telephone service and equipment?

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Code of Regulations Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Code of Regulations.

2. Are councilmembers and planning commissioners disqualified from specific plan decisions if these decisions only implement prior land use decisions?

3. May a councilmember or planning commissioner avoid a conflict of interest situation by divesting himself of an investment interest in Roseville Telephone? Would establishment of a blind trust be an effective way to avoid a conflict of interest?

CONCLUSIONS

1. Because decisions to adopt specific plans will have foreseeable and material financial effects on Roseville Telephone, councilmembers and planning commissioners who own stock worth more than \$1,000 in Roseville Telephone are disqualified from participating in those decisions.

2. A specific plan implements prior land use decisions by establishing the number, type, and location of housing units and businesses in a specific plan area. In turn, by establishing the number and type of new customers of telephone service and equipment in a specific plan area, a decision to adopt a specific plan directly and significantly affects Roseville Telephone. Therefore, councilmembers and planning commissioners with an economic interest in Roseville Telephone are disqualified from a decision to adopt a specific plan.

3. If a councilmember or planning commissioner sells his or her stock in Roseville Telephone on the open market and does not know the identity of the buyer, Roseville Telephone no longer will be an economic interest for that official. The official then would be able to participate in a decision that would have a foreseeable and material financial effect on Roseville Telephone.

If an official creates a blind trust, however, disqualification will be required until the trustee sells the Roseville Telephone stock.

FACTS

In a previous letter, you requested advice about a planning commissioner's disqualification from decisions about the Northwest Roseville Specific Plan ("Northwest Plan") and North Central Roseville Specific Plan ("North Central Plan") areas, because of employment with an architectural firm. (Dean Advice Letter, No. A-88-118, copy enclosed.)

In a second letter, you asked about disqualification from the same specific plan decisions for councilmembers and planning commissioners who own stock in Roseville Telephone Company ("Roseville Telephone"). (Dean Advice Letter, No. A-88-316, copy enclosed.) You now request additional advice regarding decisions to adopt the Northwest Plan and North Central Plan areas by public officials owning stock in Roseville Telephone.

Mr. Hamel, Mr. Ozenick and Mr. Santucci are councilmembers who own stock in Roseville Telephone. Mr. Kinder and Ms. Rocucci are planning commissioners who also own stock in Roseville Telephone.

In your most recent letter you wrote that the general tenor of development for the City of Roseville was determined in 1985 when the city amended the land use element of the general plan by allocating tentative land use to each of four specific plan areas. The land-use element included maximal numbers of dwelling units. Those general land uses, however, were contingent on adoption of a specific plan for each area. The city council and planning commission now will be determining where in specific plan areas various land uses will be situated and how property development will be coordinated and financed.

The city council and the planning commission have begun considering adoption of two specific plans: (1) the 1,547-acre Northwest Plan and (2) the 2,396-acre North Central Plan.

The Northwest Plan permits mainly residential development, including some multi-family housing, and some neighborhood commercial development. The North Central Plan will have major commercial development and some residential projects, including multi-family housing.

We do not have detailed information about the number of new Roseville Telephone customers adoption of either specific plan will create. By telephone on November 10, 1988, however, you advised us to assume that adoption of either plan will have a foreseeable and material financial effect on Roseville Telephone.

ANALYSIS

Section 87100 prohibits a public official from making, participating in making, or in any way attempting to influence a governmental decision in which an official knows or has reason to know he or she has a financial interest. An official

has a financial interest in a decision that will have a foreseeable and material financial effect, different from the effect on the general public, on the official or on his or her immediate family or on the following:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103(a) and (c).

City councilmembers and planning commissioners are public officials. (Section 82048.) As you have told us, decisions to adopt specific plans for the Northwest Plan and North Central Plan areas will have a foreseeable and material financial effect on Roseville Telephone's gross revenues, expenses, or assets. In turn, councilmembers and planning commissioners who own stock worth \$1,000 or more in Roseville Telephone will be disqualified from participating in those decisions. Therefore, Mr. Hamel, Mr. Ozenick, Mr. Santucci, Mr. Kinder and Ms. Rocucci are disqualified from decisions to adopt these specific plans.

Effect of prior land use decisions on decisions to adopt specific plans

You have inquired whether a decision to adopt a specific plan is a decision that implements land use decisions that were made in 1985. If so, would we still conclude that the councilmembers and planning commissioners are disqualified?

A general plan sets forth a local government's development policies, objectives and standards by establishing general guidelines for land use in the area. (58 Ops. Cal. Atty. Gen. 21, 23 (1975).) A specific plan includes all detailed regulations, conditions, programs and proposed legislation necessary for systematic implementation of each element of the general plan. (Section 65451.)

For example, a specific plan provides standards for population and building density. (Section 65451(c).) A specific plan also implements a general plan's open-space element. (Section 65451(d)). Therefore, adoption of a specific plan will establish the number, location and type of new housing and businesses to be developed in an area.

Similarly, decisions about the Northwest Plan and North Central Plan areas will establish the number and type of new customers for Roseville Telephone's services. Consequently, decisions about these specific plans will have a more direct and specific effect on Roseville Telephone than the 1985 decisions about general land use. For these reasons, we still conclude that councilmembers and planning commissioners with an economic interest in Roseville Telephone are disqualified from decisions to adopt specific plans for the Northwest Plan and North Central Plan areas.

Divestiture of Roseville Telephone stock

If a public official sells his or her stock in Roseville Telephone on the open market and does not know the identity of the buyer, Roseville Telephone no longer will be an economic interest for that official. (Holman Advice Letter, No. A-88-107, copy enclosed.) That public official then would be able to participate in a decision affecting Roseville Telephone.

On the other hand, if a councilmember sells his or her stock privately and knows the identity of the buyer, the official will have to report the buyer as a source of income on Schedule D of his or her statement of economic interests. (Section 82030(a).) Then the councilmember would have to consider the possible effect of the decision on the buyer. If the buyer were Roseville Telephone, the councilmember would be disqualified from participating in a decision that would foreseeably and materially affect Roseville Telephone for 12 months after he or she sold the stock.

Establishment of a blind trust

Establishing a blind trust will not necessarily relieve a councilmember or a planning commissioner from having an economic interest in Roseville Telephone.

Section 82034 defines an investment for purposes of the Act to include a pro-rata share of investments of a trust in which

the individual or immediate family owns directly, indirectly or beneficially a 10-percent interest or greater. Regulation 18235 (copy enclosed) directs an official to report interests in a blind trust, as follows:

(a) Notwithstanding the provisions of 2 Cal. Adm. Code Section 18234(c), a filer who has a direct, indirect or beneficial interest in a blind trust which meets the standards set forth in subsection (b) is not required to disclose the pro rata share of the trust's interests in real property or investments, or income deriving from any such interests or investments, if those interests or investments are acquired by the trustee after the trust complies with subsection (b).

However, nothing in this section relieves the filer from his or her obligation (1) to disclose the pro rata share of the trust's interests in real property or investments, if the interests or investments were originally transferred into the trust, and (2) to disqualify himself or herself from participating in decisions which may have a foreseeable and material effect on financial interests which are reportable under this regulation.

Regulation 18235(a) (emphasis added).

Therefore, even if an official creates a blind trust, the official still is disqualified from participating in decisions that would affect an investment interest originally transferred into the trust. Similarly, a councilmember who transfers his or her Roseville Telephone stock into a blind trust will be disqualified from a specific plan decision until receiving notice that the trustee has disposed of the Roseville Telephone stock. (Regulation 18235(a) and (b)(3).) The mere creation of a blind trust does not eliminate the official's knowledge of the assets held in the blind trust. It is only when the trustee disposes of an asset that the official has no knowledge of the replacement asset and, thus, has no knowledge of his or her financial interest in a decision.

In summary, a councilmember or planning commissioner must sell his or her Roseville Telephone stock to someone other than Roseville Telephone to be able to vote on a specific plan that will have a foreseeable and material financial effect on Roseville Telephone.

Michael F. Dean
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I hope this letter provides your clients with adequate guidance. Please call me at (916) 322-5901 if you have any questions about this letter.

Sincerely,

Diane M. Griffiths
General Counsel

A handwritten signature in cursive script, appearing to read "Margarita Altamirano", written in dark ink.

By: Margarita Altamirano
Counsel, Legal Division

DMG:MA:aa

Enclosures



City of Roseville

Office of the City Attorney

F.P.P.C.

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Phone 781-0325
311 Vernon Street
Roseville, California
95678

November 1, 1988

Margarita Altamirano
Counsel, Legal Division
Fair Political Practices Commission
P.O. Box 807
428 J Street, Suite 800
Sacramento, California 95804-0807

Re: Conflict of Interest Arising out of Roseville
Telephone Company Stock Ownership
Your File no. I-88-316

Dear Ms Altamirano:

Thank you for your letter dated October 6, 1988. After reviewing it, I have a number of additional questions.

1. Status of advice as "informal". In your letter, you have characterized my request as one for informal assistance because the City has "... not asked a question about a specific pending decision." That is not correct. As I noted in my request to you dated August 10, 1988, both the Northcentral and Northwest Specific Plan Areas are currently up for adoption. In fact, the Planning Commission is currently in hearings on the Northwest Roseville Specific Plan and a decision will be made by it within a matter of a few short weeks. The matter will then be forwarded to the Roseville City Council by the end of this year for formal decision. The request is, therefore, far from hypothetical. The two specific plans were described to you in some detail in my prior letter dated March 17, 1988.

On behalf of the Roseville Planning Commission and City Council, who have authorized this request, I specifically request formal advice so as to provide immunity to any Planning Commissioner or Councilmember acting in accordance with it. A list of affected members and titles is enclosed.

2. Reconsideration of conflict. Your letter of October 6 generally concludes that councilmembers or planning commissioners owning stock in Roseville Telephone Company are disqualified from taking part in a decision relating to the specific plans if the decision would foreseeably result in an increase in gross revenue to Roseville Telephone Company of \$150,00 or more. Does this

Margarita Altamirano
November 1, 1988

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answer change where the specific plans are based on a prior land use decision made in 1985?

On November 6, 1985, by Resolution 85-207 (copy enclosed), the City of Roseville amended the land use element of its General Plan by allocating tentative land use (including maximum numbers of dwelling units) to each of the four specific plan areas in the City, including the Northwest and Northcentral Roseville Specific Plan Areas. The land uses granted were contingent upon later adoption of a School Facilities Component, Financing Plan and a Specific Plan for each area. As a result, although the final decision as to precisely where within the specific plan areas such land uses would lie, precisely how such land uses would be financed, and what the order of development or precise mix of development would be, the general tenor of development was determined in 1985. The adoption of the specific plans themselves implements this prior decision of the Council. Under those circumstances, does a conflict still exist for a Planning Commission member or City Councilmember owning \$1,000 or more of Roseville Telephone Company stock?

3. Participation after choosing a member by lot. Your letter of October 6 noted that an otherwise disqualified official, chosen by lot to constitute a quorum of the Council, is limited to voting only. The disqualified official may not participate in discussions.

That conclusion does not make any sense in the context of a public hearing process which may continue over a period of some weeks. Assuming that a conflict of interest does exist as a result of stock ownership, in the case of the Roseville City Council, three of the five members will be unable to participate. As a result, one will be chosen by lot. Your letter in effect states that the member chosen by lot will be unable to ask any questions of the staff or the public during the public hearing process. That member will be unable to make any comments regarding his opinion. That member will be unable to make a motion or do anything else other than simply vote on someone else's motion. While this rule may make sense in a short decision-making process (such as awarding a bid to a low bidder), I do not see how a complex EIR or specific plan document can be fully reviewed by a councilmember who cannot ask questions or provide comments. This is not a "yes" or "no" decision -- the plan can have infinite variety, but a consensus needs to be reached somehow by the participating members. The public interest does not seem to be enhanced by limiting the Council to only two active members.

4. Cure of the conflict. Assuming a conflict by reason of stock ownership exists, what must a commissioner or councilmember do to rid him or herself of the conflict of interest? Is

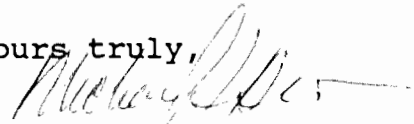
Margarita Altamirano
November 1, 1988

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disposing of ownership interest in the stock adequate? If so, at what point must they do so in order to participate? May a commissioner or councilmember rid him or herself of such a conflict of interest by establishing a "blind trust"? If so, what are the parameters and procedures which should be followed in establishing such a trust so that it is truly "blind"?

As I have noted, hearings are already in progress at the Planning Commission level. (All members owning stock have conflicted out, and a bare quorum remains.) Therefore, your very prompt response would be greatly appreciated. Thank you for your cooperation.

Yours truly,



MICHAEL F. DEAN
City Attorney

MFD/mlc

Enclosures

cc: City Manager
Administrative Services Director
Planning Director

List of Affected Members of the
Roseville Planning Commission and City Council

Planning Commission Members:

Jay Kinder
Pauline Roccucci

City Councilmembers:

Mel Hamel
Phil Ozenick
Bill Santucci

Mailing address for all officials is:

311 Vernon Street
Roseville, CA 95678

RESOLUTION NO. 85-207

RESOLUTION OF THE COUNCIL OF THE CITY OF ROSEVILLE
AMENDING THE LAND USE MAP OF THE GENERAL PLAN

WHEREAS, on January 11, 1984, the Council, by resolution No. 84-8, adopted a revised Land Use Element of the General Plan of the City of Roseville, and

WHEREAS, said revised Land Use Element adopted certain policies which provide that increased land use intensity of varying types in specified amounts should be allocated to given areas within the City including the "Northwest", "North Central", "Northeast", and "North" areas of the City of Roseville, and

WHEREAS, said revised Land Use Element provides, and it is the intent of the Council, that such increases in land use intensity should not be effective until the adoption of Specific Plans for each area, and

WHEREAS, prior to adoption of said Specific Plans, it is this Council's intention there first be adopted a Financial Plan and a School Component to the General Plan Public Facilities Element, and

WHEREAS, said Specific Plans will contain limitations on intensity of use of non-residential land use and other conditions, and

WHEREAS, only one of said Specific Plans will provide land use intensity for a regional shopping center even though the Land Use Map of the Land Use Element of the General Plan adopted by this resolution may show more than one such sites, and

WHEREAS, the land owners within each of the said areas will bear responsibility for producing a first draft of the said Specific Plans for review, and

WHEREAS, upon adoption of the said revised Land Use Element, the Council certified an Environmental Impact Report pursuant to the California Environmental Quality Act which analyzed the effects of distributing the additional land use, the alternatives, and the necessary mitigations should this action be taken, and

WHEREAS, a proposal for amendment to the Land Use Map of the General Plan of the City of Roseville allocating said increased land use intensity was submitted to the Planning Commission of the City, and

WHEREAS, the Planning Commission on July 25, 1985, August 22, 1985, September 17, 1985, and October 10, 1985, did hold a public hearing on the proposed Land Use Map amendment in accordance with Section 65351 of the Government Code, and

WHEREAS, on October 23, October 30, and November 6, 1985, this Council held a public hearing on the Land Use Map amendment in accordance with Section 65351 of the Government Code, and

WHEREAS, it is the desire of this Council to approve said amendment to the Land Use Map of the General Plan, pursuant to said Land Use Element, and subject to the requirement that the said Specific Plans be adopted;

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Roseville as follows:

1. The Land Use Map of the General Plan of the City of Roseville is hereby amended as shown on that certain map entitled "Land Use Map of the General Plan of the City of Roseville" dated November 6, 1985, and on file in the Office of the City Clerk, as to those areas within the Northwest, North Central, Northeast and North areas.

2. No increase in density, change in land use, or increase in land use intensity in Northwest, North Central, Northeast, or North areas of the City, as such areas are shown on said Map, shall be effective unless and until a Specific Plan for the respective area shall have been adopted by this Council. Each such Specific Plan may contain limitations on the intensity of use for non-residential land uses, and the land owners within each of the areas shall bear responsibility for producing a first draft of the Specific Plan for review. Only one of the Specific Plans shall contain a regional shopping center, even if more than one site is designated on the Land Use Map, and only one such site shall be developed.

3. Prior to the adoption of the Specific Plans, there shall first be adopted by this Council a Financial Plan and a School Component to the General Plan Public Facilities Element.

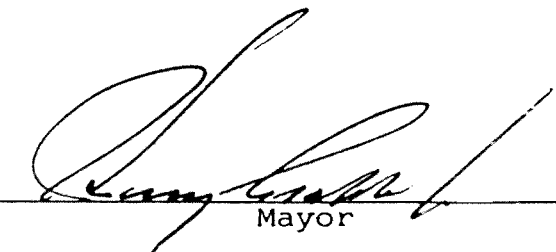
4. The Planning Director is hereby directed to retain said General Plan Land Use Map on permanent public display in the Planning Department, and is further directed to note upon the face of said map that such Specific Plan adoption is required pursuant to this resolution.

PASSED AND ADOPTED by the Council of the City of Roseville this 6th day of November, 1985, by the following vote on roll call:

AYES COUNCILMEMBERS: Richard Roccucci, June Wanish, John M. Byouk, Martha Riley, Harry Crabb, Jr.

NOES COUNCILMEMBERS: None

ABSENT COUNCILMEMBERS: None



Mayor

ATTEST:



Pauline Brockman



City of Roseville

Office of the City Attorney

FPPC

Nov 3 8 30 PM '88

Phone 781-0325
311 Vernon Street
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Margarita Altamirano
Counsel, Legal Division
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3. Prior to the adoption of the Specific Plans, there shall first be adopted by this Council a Financial Plan and a School Component to the General Plan Public Facilities Element.

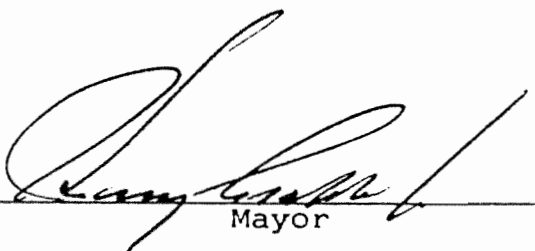
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PASSED AND ADOPTED by the Council of the City of Roseville this 6th day of November, 1985, by the following vote on roll call:

AYES COUNCILMEMBERS: Richard Roccucci, June Wanish, John M. Byouk, Martha Riley, Harry Crabb, Jr.

NOES COUNCILMEMBERS: None

ABSENT COUNCILMEMBERS: None


Mayor

ATTEST:


City Clerk